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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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C. GREGORY FIFER,  
*Complainant,*

v.

TOWN OF GEORGETOWN,  
*Respondent.*

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Formal Complaint No.  
18-FC-29

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Town of Georgetown (“Town”), specifically the Clerk-Treasurer, violated the Access to Public Records Act<sup>1</sup> (“APRA”). The Town did not file an answer to the complaint with this Office. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on February 14, 2018.

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<sup>1</sup> Ind. Code §§ 5-14-3-1 to -10

## **BACKGROUND**

C. Gregory Fifer (“Complainant”), an attorney, filed a public records request with Georgetown Clerk-Treasurer Brenton M. Fender that contained a numbered list of sixteen individual requests—some seeking multiple documents—on December 21, 2017. The entire request will not be recited here.

Seven days later, Clerk-Treasurer Fender acknowledged receiving the request and stated the copy fee for the records would be \$0.10 per page.

On January 30, 2018, Fifer sent a follow-up email to Fender requesting an update as to when he would be able to pick up the requested records. Fifer contends that he received no further communication from the Clerk-Treasurer or any other representative of the Town about his request.

As a result, he filed this formal complaint against the Town. This Office sent notice to Town on February 14, 2018. The Town failed to respond to the complaint despite an invitation to do so.

## **ANALYSIS**

### **1. The Access to Public Records Act (“APRA”)**

It is the public policy of the State of Indiana that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Ind. Code § 5-14-3-1. Further, APRA expressly states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine du-

ties of public officials and employees, whose duty it is to provide the information.” *Id.* There is no dispute that the Town of Georgetown (“Town”) is a public agency for the purposes of the APRA; and thus, subject to the Act’s disclosure requirements. Ind. Code § 5-14-3-2(q)(6).

Therefore, unless otherwise provided by statute, any person may inspect and copy the Town’s public records during regular business hours. *See* Ind. Code § 5-14-3-3(a).

Indeed, the Act contains both mandatory and discretionary exceptions to the general rule of disclosure. Specifically, APRA prohibits a public agency from disclosing certain records unless access is specifically required by state or federal statute or is ordered by a court under the rules of discovery. *See* Ind. Code § 5-14-3-4(a). APRA also lists other types of public records that may be excepted from disclosure at the discretion of the public agency. *See* Ind. Code § 5-14-3-4(b).

A public agency is required to make a response to a written request within seven (7) days after it is received or the request is deemed denied. *See* Ind. Code § 5-14-3-9(c). If a records request is provided in writing, and the request is denied, the denial must also be provided in writing and contain a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record as well as the name and title of the official denying the record. Ind. Code § 5-14-3-9(d).

In this case, the Complainant asserts—based on the Town’s radio silence— that his request has been constructively denied.

Granted, Fifer's records request is broad—perhaps overbroad—but the Town has not made such an assertion based on the evidence presented to this Office.

Without the benefit of a response from the Town, there is no way to guess—far less reasonably determine—whether Fifer's request is still in play, being intentionally ignored, or if it is tragically lost and buried under a copy of Sherman Minton's biography in the Clerk-Treasurer's office. This Office routinely declines any invitation to make arguments for either side in a public record dispute.

Although this Office is not a court of law, the rules employed by the judiciary are a useful guide in managing the disputes brought before the Public Access Counselor. For instance, under the Indiana Trial Rules, a claim in a pleading to which a responsive pleading is required, except for damages, is admitted when not denied in a responsive pleading. *See* Ind. R. Trial P. 8(D).

So too is the case here. If a public agency disregards an invitation from this Office to respond to a formal complaint, then the claims of the Complainant will be considered admitted.

On the other hand, the Complainant should be mindful that requests for records under APRA are distinguishable from requests for production under the discovery rules. Every request under APRA must state with *reasonable particularity* the records being sought. Although the Town did not raise the issue, the Complainant's request is analogous to a discovery request.

## CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Town of Georgetown violated the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt  
Public Access Counselor